



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET**

Petition 2 of 2008

**KIMELI JONAH ROGERS:.....PETITIONER
ALIAS ANDREW KIPKEMOI CHEBOI)**

-VERSUS-

REPUBLIC:.....RESPONDENT

RULING

The Petitioner was charged before the Iten Resident Magistrate's Court with the offences of obtaining by false pretence and uttering false documents. He pleaded not guilty. The trial commenced but along the way the Applicant made an application for reference to the High Court on the grounds that his constitutional rights under sections 72 (3)(b) 72(1), 77(1) and S.84(1) of the constitution of Kenya were breached. It was alleged that the accused was arrested on 10th June 2007 and was detained in police custody until 19th June 2007 when he was taken to court to take plea. That he faced non-capital charges. That being so held for eight (8) days made the charges against him and prosecution of him a nullity and an illegality. That the Petitioner's right to be informed of the charges against him was infringed and he was deprived of his right to liberty for eight days.

And affidavit in opposition to his Petition was sworn by Corporal Joseph Asugo a police officer stationed at Kapsowar police station. He stated that the Petitioner herein was initially arrested on 2nd June 2007 by Administration Police from Kapsait over the same complaint as in the charges he now faces and that he was released the same day on the instructions of the D.C.I.O. That the Petitioner upon his release went and threatened and intimidated the would be witnesses so much so that when he was again arrested on 10th June 2007 the witnesses were still scared to write their statement and did not record their statements until 12th June 2007, 15th and 18th June 2007 and as there was no transport on 18th June 2007, the Petitioner was finally brought to court on 19th June 2007. The police man swearing the affidavit states that it was the behaviour of the Petitioner of threatening and intimidating witnesses that made the police deny him bond.

That the Petitioner was held for eight (8) days for a bailable offence before being brought to court is not denied. The reasons for the delay are plausible and they are not denied by the Petitioner either by way of a replying affidavit or by submissions by his counsel at the hearing. It was the Petitioner's own illegal conduct, which as stated above, he does not deny, which led to him being denied police bond. He appears to have acted to prevent the cause of justice by threatening and intimidating witnesses against him. His constitutional rights are not superior to other people's constitutional rights; in this case they were not superior to those of the intended witnesses.

In the circumstances of this case I do not find that a delay of eight days was unreasonable given that it was the conduct of the Petitioner that scared away witnesses from recording their statements. I accept the Prosecutions explanations for the delay and decline to find that any rights of the Petitioner herein were breached. Accordingly the Petition herein is found to be without merit and is dismissed. I order that Iten Resident Magistrate's Court Criminal Case No.621/2007 do proceed to its logical conclusion.

Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 11TH DAY OF MARCH, 2010.

P.M.MWILU
JUDGE

IN THE PRESENCE OF

Paul Ekitela - Court clerk
Mr. Kitur - Advocate for the Petitioner
Mr. Kabaka for Chirchir - For the state
Applicant - Present